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November 17, 2000

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Vernon A. Williams, Esq.
Secretary
Surface Transportation Board
1925 K Street, N.W., Suite 700
Washington, DC 20423

Re: Ex Parte No. 582 (Sub-No. 1), Major Rail Consolidation Procedures

Dear Secretary Williams:

Enclosed for filing are the original and 25 copies of the opening comments of PPL Generation, LLC and PPL Montana, LLC in response to the Board's October 3, 2000 Notice of Proposed Rulemaking in the above-referenced proceeding. A diskette is also enclosed.

Please note, if your office has not already done so, my new address, as follows:

John M. Cutler, Jr.
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Please call me if there are any questions about this filing. Thank you.

Sincerely,

John M. Cutler, Jr.

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BEFORE THE

SURFACE TRANSPORTATION BOARD

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MAIL MANAGEMENT STB

EX PARTE NO. 582 (SUB-NO. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

OPENING COMMENTS OF PPL GENERATION, LLC
AND PPL MONTANA, LLC

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Attorney for PPL Generation, LLC
and PPL Montana, LLC

Dated: November 17, 2000

BEFORE THE

SURFACE TRANSPORTATION BOARD

EX PARTE NO. 582 (SUB-NO. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

OPENING COMMENTS OF PPL GENERATION, LLC AND PPL MONTANA, LLC

PPL Generation, LLC, and PPL Montana, LLC (collectively "PPL") respectfully submit the following opening comments concerning the Notice of Proposed Rulemaking ("NPR") served October 3, 2000 in this proceeding. PPL Generation, LLC is successor to PPL Electric Utilities Corporation, which filed opening and reply comments with PPL Montana, LLC in response to the Board's Advance Notice of Proposed Rulemaking, in the last phase of this proceeding.

I. <u>INTRODUCTION</u>

It is no exaggeration to say that this is the most important proceeding the STB has conducted since its inception. Indeed, during the 20 year period since the Staggers Rail Act of 1980, there have been few proceedings before the ICC or the Board that approach the significance of Ex Parte No. 582 (Sub-No. 1).

The rail industry of 1980 was characterized by overcapacity, a large number of Class I railroads, and financial insecurity (or bankruptcy) for many lines. Despite the levels of competition that accompanied a large number of major and smaller railroads, the ICC was regarded by shippers as an agency that offered real relief from abuses of railroad market power, in keeping with the Commission's historic role as regulator of the industry.

Since 1980, the level of intramodal competition faced by the major railroads has declined precipitously. The four largest Class I railroads -- UP and BNSF in the west, and NS and CSX in the east -- face limited competition from other major railroads, most of which have been merged out of existence. There are some shippers in the northeast formerly captive to Conrail that now benefit from access to CSX and NS, though service problems remain.

Competition from smaller railroads could theoretically provide a measure of market discipline to the major eastern and western railroads, constraining rates and encouraging improved service. However, competition from Class II and III railroads is severely limited, and often eliminated, by paper and steel barriers.

Trucking companies compete vigorously with railroads for many commodities, though typically not for high volume, long-haul or low value commodities, and barge competition is limited by the need for access to waterways, and by seasonal obstacles such as flooding and ice. It is indisputable that the years since 1980 have brought a dramatic reduction in the extent and effectiveness of competition faced by major railroads.

This development stands in stark contrast to the dramatic increases in competition resulting from legislative and regulatory initiatives applied to almost every other industry formerly characterized by monopoly power or regulatory protection from new or expanded competition. The trucking industry, telecommunications, natural gas pipelines, and the electric power industry have all had old franchises opened up to new competition. Entry barriers have been removed, open access has been ordered, and contractual barriers to competition, such as exclusive dealing agreements (comparable to railroad industry paper barriers) have been abrogated by statute or rule (or as a merger condition). Where not struck down by regulatory agencies, such agreements have been recognized as anticompetitive and unsustainable under antitrust laws and policies.

It is a fundamental tenet of American legal and economic policy that if concentrated market power is not constrained by effective competition, it must be constrained by regulation. Without effective regulation, railroads with significant market power will exploit their captive customers, on the theory that those customers will have no choice but to pay whatever the railroad charges, so long as the shipper can survive. Other monopolies have also abused their economic power.

To prevent this outcome, federal regulatory agencies (beginning with the Interstate Commerce Commission, as the fountainhead of American administrative law), as well as state Public Service Commissions and other agencies, have generally sought to limit price gouging, discrimination in pricing and service, foreclosure of access, service cutoffs or cutbacks, adhesion contracts and other abuses that accompany monopoly power.

It may be argued that prior to 1980, regulation went too far, stifling initiative and discouraging investment. The railroads made these arguments to Congress, and Congress agreed, enacting the 4R and Staggers Acts. However, the railroads cannot legitimately complain of overregulation by the ICC or STB during the last 20 years. On the contrary, the ICC and STB have approved mergers that have reduced competition for major railroads, while also issuing rules and adjudicatory decisions that have reduced shippers' recourse to regulatory solutions.

With respect to maximum reasonable rail rates, too few shippers are able to take advantage of the remedies provided for in Coal Rate Guidelines -- Nationwide, 1 I.C.C 2d 520 (1985), aff'd sub nom. Consolidated Rail Corp. v. United States, 812 F.2d 1444 (3d Cir. 1987). The remedies in Rate Guidelines -- Non-Coal Proceedings, 1 S.T.B. 1004 (1996) may not work for anyone, and such remedies as the Board provides were weakened when the Board allowed bottleneck railroads to leverage their monopoly power over competitors' lines in the Bottleneck decision.[1] For other examples of decisions since 1980 that have reduced the effectiveness of

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[1] Docket No. 41242, et al., Central Power & Light Co. v. Southern Pacific Transportation Co. (decisions served December 31, 1996 and April 30, 1997), aff'd sub nom. MidAmerican Energy Co. v. STB, 169 F.3d 1099 (8th Cir. 1999), cert. denied 120 S.Ct. 372 (1999).

shippers' regulatory remedies, see PPL's Comments filed February 29, 2000 in Ex Parte No. 582, Public Views on Major Rail Consolidations, at pp. 7-14. Those Comments are incorporated herein by reference.

As a result of these developments, most shippers can look neither to competition nor to regulation for solutions when major railroads charge too much, provide inadequate service, or both. Even the antitrust laws, which help prevent anticompetitive conduct by unregulated industries, are largely ineffective when it comes to the railroads. The statute preempts many antitrust remedies on the theory (which too rarely matches reality) that shippers have recourse to effective regulatory remedies.

Fairness aside, it might be argued that the shippers' loss is the railroads' gain, and that the ability of railroads to operate with minimal intramodal competition and minimal regulation has enabled the rail system to flourish. Certainly, the rates of return enjoyed by the major railroads have improved. However, service problems have been frequent and severe, the reliability of "normal" service has been erratic, and the gap in service quality between railroads and motor carriers has widened.

The trucking industry, despite generally lower profit margins than railroads, has invested heavily in new technology, providing excellent service at reasonable prices. Several trucking company CEOs have conceded that these gains would not have been achieved if the industry had not been exposed to competitive pressures. The railroads, in contrast, have invested heavily in consolidations, reducing the competitive pressures that have produced such beneficial results for trucking companies and for shippers by truck.

For the foregoing reasons, the status quo leaves much to be desired. Further consolidations among major railroads will make things worse, not better. The Board must act vigorously now, to reverse the trends toward less effective competition and less effective regulation. Otherwise, the damage is likely to be irreversible.

II. BACKGROUND

This proceeding is an outgrowth of the extraordinary hearings the Board initiated in Ex Parte No. 582, Public Views on Major Rail Consolidations. Under consideration in this phase of this proceeding are revised regulations that the Board has proposed to adopt, based on the extensive comments filed in response to its Advance Notice of Proposed Rulemaking served March 31, 2000.

PPL applauds the Board for instituting this proceeding, and for recognizing that "business as usual" under the merger regulations promulgated in the early 1980s is not just inappropriate, but adverse to the public interest. As outlined above, in today's environment, major railroads enjoy a freedom from accountability that no other industry enjoys. With limited exposure to the discipline of the marketplace and to the constraints of regulatory scrutiny, the railroads have had little incentive to give a high priority to good service or reasonable rates for captive shippers.

As major railroads have focussed on consolidation, rail service has deteriorated, rates have gone up (especially for the growing segment of the shipping public served by a single railroad), and too many shippers have found that regulatory remedies are nonexistent or ineffective.

PPL, which is currently litigating its third rail rate case under the methodology adopted in Coal Rate Guidelines, supra, acknowledges that effective regulatory remedies are available for some shippers. PPL also understands the Board's desire to keep this proceeding within manageable boundaries. There are issues of concern to shippers that should be addressed on another occasion. The fact remains that, soon after the current moratorium expires, the Board may be faced with one or more merger applications for transcontinental and/or transnational mergers that could lead to a North American rail duopoly.

Time is short and the need for reform is urgent. In addition, procedural due process considerations favor clear notice to the major railroads and to other concerned parties, including shippers, rail labor and governmental interests, of the new policies and procedures that will govern future mergers among major railroads.

III. ARGUMENT

A. The Board's Proposed Regulations and Notice Are Too Vague

In its ANPR, the Board was commendably specific, seeking public comments as to a long list of issues in this proceeding. These include not just the need to enhance competition among major railroads, but also such details as the need for reexamination of the Board's "one-lump" theory and its assumption that only "2-to-1" shippers are harmed by mergers. The Board also acknowledged the danger of foreclosure of access through the physical or economic closing of gateways, and it called for comments on paper and steel barriers. These can make Class II and III railroads, which should contribute to rail-to-rail competition, even more captive to major railroads than many shippers.

The ANPR also solicited comments on bottleneck issues, which will be exacerbated by further mergers unless addressed effectively in this proceeding, and on the well-documented failure of recent merger partners to maintain pre-merger service levels, much less to keep their promises of improved service.[2]

In addition, PPL and other parties devoted considerable effort to their discussions of issues not raised by the ANPR, but nevertheless relevant to the overall question of how the Board should prepare for the next and possibly final round of major railroad consolidations.

For example, PPL urged the Board to take steps to prevent railroads from simply recovering from shippers the costs of remedying merger problems resulting from poor planning or

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[2] The ANPR and NPR also address issues, such as labor concerns and cross-border regulation, that PPL does not plan to discuss in these Opening Comments. Though important, these issues do not directly affect PPL coal shipments. PPL reserves the right to address these issues in subsequent comments if other parties' filings raise significant points of concern for PPL. Similarly, PPL will reserve judgment on other, technical aspects of the proposed regulations.

implementation. Railroad management and shareholders must not be insulated from all risks. The Board must also adopt competitive remedies that apply both to merging railroads and to other major railroads that do not merge. Otherwise, the first railroads to merge will be placed at a competitive disadvantage, as PPL and BNSF pointed out.

These issues and others drew detailed comments from many parties. The Board is plainly aware of these comments, having summarized them at length at pp. 279-348 of its NPR. However, conspicuous by their absence from the proposed regulations and their explanatory text at pp. 8-41 of the NPR are most of the detailed issues raised in the ANPR and discussed in the parties' last round of comments.

A case can sometimes be made for vagueness in regulations themselves. Conventional rulemaking proceedings under 5 U.S.C. § 553 are designed to establish rules of general and broad applicability. It is often useful to avoid too much detail, in order to allow the new regulations to be fleshed out in subsequent adjudicatory proceedings where they are applied to actual transactions.

The wisdom of this approach is highly questionable here. There may be only two proceedings to which the new regulations apply, and if they are processed at the same time (even if not on exactly the same schedule), the Board will, in effect, have one chance to clarify its regulations by applying them to a major merger.

Unless the Board provides additional specificity in its final regulations, or in the explanatory text or preamble accompanying the regulations ultimately adopted, railroads, shippers and others affected by the new merger regulations, i.e., the STB's entire constituency, will be left in the dark as to what the Board has done in many critical areas.

It is highly likely that the way the Board applies its new rules in the next major merger proceeding will establish the precedents that will also govern the merger after that (which could finalize the consolidation of major railroads in North America into two huge systems). All parties therefore need to know more now, rather than later, about the Board's new policies.

Greater specificity is also needed to meet the requirements of the Administrative Procedure Act and judicial review. The requirement in Section 4 of the APA, 5 U.S.C. § 553(c), of a statement of new rules' "basis and purpose" must be met if reviewing courts are to understand "the legal and factual framework underlying the agency's action." Action on Smoking and Health v. CAB, 699 F.2d 1209, 1216 (D.C. Cir. 1983), citing Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 417 (1971) ("The court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.")

The court in Action on Smoking and Health went on to explain:

> An agency need not respond to every comment, but it must "respond in a reasoned manner to

> the comments received, to explain how the agency resolved any significant problems raised by the comments, and to show how that resolution led the agency to the ultimate rule.... The basis and purpose statement is inextricably intertwined with the receipt of comments.

699 F.2d at 1216, citations omitted.

The APA thus contemplates not just a statement of the problem and a statement of the proposed solution, but also requires discussion of the issues raised by the comments and an explanation of the connection between the agency's reasoning as to key issues, and resulting regulations.

Where, as here, publication of an NPR is preceded by voluminous comments on an ANPR, it is important for the Board to present such an analysis in the explanatory text accompanying the proposed regulations. Merely summarizing the comments, without discussing them in any detail, is not an adequate substitute.

Fairness to the Board requires acknowledgement that in certain areas, greater specificity (at least at the NPR stage) <u>has</u> been provided. For example, the parties are told far more about the market analyses and service assurance plans that would be required under proposed 49 C.F.R. §§ 1180.7 and 1180.10 than about how the Board expects merging railroads to preserve and enhance competition. The detail as to the former is helpful, but the vagueness as to the latter is disappointing.

Shippers and other interested parties need clearer guidance to calculate their chances of success in undertaking the burdens of opposing a major rail consolidation, or seeking pro-competitive conditions. Many shippers have devoted considerable time, effort and resources to pursuing pro-competitive conditions in past merger proceedings, only to be thwarted by the Board's reliance on the "one lump" theory, or its refusal to consider relief for any shipper other than a "2-to-1" shipper.

Now we are told that there has been a "paradigm shift," and that the "bar has been raised." This sounds good, but what does it mean? In subsequent sections of these Comments, PPL will provide examples of some of the areas in which greater clarity is needed. The Board is strongly urged to discuss these and other parties' comments in greater detail in its final rules in this proceeding, or in the preamble or decision accompanying those rules.

B. The Board Should Limit Merging Railroads' Ability to Recover the Costs of Mergers, or the Costs of Remedial Action for Merger Problems, through Rate Increases

In its Opening Comments at the ANPR stage of this proceeding, PPL noted that the Board had called for comments in the Conrail Acquisition oversight proceeding (Finance Docket No. 33388 (Sub-No. 91)) concerning whether the high costs of its acquisition should be prevented from adversely affecting jurisdictional threshold and revenue adequacy measurements for NS and CSX. Similar issues must be addressed in this proceeding. As PPL observed: "Simply stated, there can be no worse message sent to the Class I railroads than that they are free to fund future consolidations through rate increases on captive traffic." PPL Opening Comments at 27-28, emphasis in original. On Reply, PPL returned to this theme, in the section titled "Captive Shippers Must Not Pay for Railroads' Mistakes." (PPL Reply Comments at 22-23.)[3]

So far as PPL can tell, this issue has been completely ignored in the Board's NPR. Nowhere do the proposed regulations or explanatory text indicate that Class I railroads which pay excessive acquisition premiums, or incur millions of dollars in remedial costs due to poor planning or poor implementation of their mergers, cannot simply increase their rates and make shippers pay for their blunders.

It is all very well for the Board to require applicants in future major rail consolidations to adopt "service assurance plans," including "contingency plans for merger-related service disruptions." However, absent Board action to prevent the recovery of all merger costs from shippers, the real contingency plan for merger-related service disruptions will be to solve all problems at shippers' expense.

Captive shippers already suffer more than other shippers from service disruptions, because they cannot simply substitute other railroads or other carriers when there are service problems. Captive shippers are also more likely to have their rates raised, and raised the highest, if merging railroads incur unexpected implementation costs that they prefer not to absorb.

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[3] Because the Board's NPR contains so little discussion that is directly responsive to parties' specific comments, PPL incorporates by reference its Opening and Reply Comments at the ANPR stage into these Comments.

Contracts are not an adequate answer to this problem. Many shippers, including most UP and BNSF grain shippers, cannot get contract service, and CSX has recently announced that it, too, intends to move away from contracts. CSX and NS have also recently raised their rates to recover unexpected Conrail acquisition costs. Their promises in Finance Docket 33388 that their acquisition would be funded entirely from cost savings and new business are now inoperative.

Rate cases are also generally unavailing, given their enormous costs and burdens. As the recent GAO reports establish, the number of rail rate cases filed at the STB is small not because shippers believe their rates are reasonable, but because shippers believe rate cases are prohibitively expensive, and too hard to win.

The Board's claims of having "raised the bar" in major rail consolidation proceedings rings hollow if obtaining STB approval for a transcontinental merger merely requires giant successor railroads to be prepared to spend more of their customers' money satisfying the new regulations. This is a price the railroads will readily pay. It is for precisely this reason that FERC and state Public Service Commissions freeze rates for a set period (e.g., 5 years) as a condition for their approval of mergers by electric or gas companies.

To correct this omission, the Board should, at a minimum, expand its requirement of contingency plans for merger related service disruptions to require merger partners to explain, in detail, how they plan to fund corrective action, and to state whether they will commit to funding such action without rate increases.

The applicants' contingency plans in the merger proceeding should be required to provide satisfactory assurance that merger costs will not simply be recovered from shippers. In addition, the Board should allow shippers whose rates may have been raised in violation of these commitments to seek relief under STB oversight jurisdiction, on a simplified basis. A showing that the challenged rate increases violate the merger conditions, or constitute an unreasonable practice, should be an adequate basis for relief without the need for full-blown rate cases.

The Board should amend proposed 49 C.F.R. § 1180.1(i) to establish these principles and remedies.

C. The Board Should Promote Elimination of Paper and Steel Barriers to Competition by Smaller Railroads

The issues of paper and steel barriers to competition by Class II and III railroads, unlike the issue of rate increases, is addressed in the Board's NPR, and the Board speaks generally of the possibility of enhancing competition through the elimination of paper and steel barriers. See, e.g., NPR at 13.

PPL welcomes this initiative, but has two concerns. First, the Board appears to be calling only for such relief from paper and steel barriers as merging Class I railroads are inclined to propose. In other words, any relief from these barriers to competition would have to come, in the first instance, from a major railroad, and would be voluntary. Under these conditions, significant relief from paper barriers is likely to be limited, and rare.

Second, PPL is concerned that the Board may be reluctant to take more vigorous action against paper and steel barriers on the theory that they were part of the quid pro quo for line sales or other cooperative agreements between the Class I and smaller railroads.

However, even in free markets, private parties are constrained by law in how they conduct themselves. Absent regulation, the antitrust laws prevent agreements in restraint of trade. Agreements to divide markets, or agreements not to compete for business, are frequently found to violate the antitrust laws, and such provisions may be abrogated by the courts (which may also impose fines or even imprisonment as penalties). See, e.g., Otter Tail Power Co. v. United States, 410 U.S. 366 (1973); Continental TV v. GTE Sylvania, Inc., 433 U.S. 36 (1977); and Palmer v. BRG of Georgia, Inc., 498 U.S. 46 (1990).

In the unregulated marketplace, the quid pro quo argument is not a valid defense to an anticompetitive agreement. It is all the more important that this argument be rejected in the context of railroad mergers, where there is already too little competition, and may soon be even less.

At the ANPR stage of this proceeding, the American Short Line and Regional Railroad Association ("ASLRRA") pointed out another reason for terminating paper barriers to greater participation in the national rail system. In many instances, the line sale in question took place years ago, and the Class I railroad has received far more in benefit than any reasonable valuation of the access or operating restriction it demanded as a sale condition.

The ASLRRA called for implementation of a "Short Line and Regional Railroad Bill of Rights" in its prior comments. This proposal was supported by several smaller railroads, including Montana Rail Link, which serves the Corette generating station of PPL Montana, LLC, subject to extensive BNSF-imposed pricing and operational restrictions. This Bill of Rights, unlike the Board's NPR, offers real hope for new competition from Class II and III railroads.

Although the NPR does not explain why the ASLRRA Bill of Rights was given such short shrift, the Board may have speculated that alternative forms of competition, similar to the trackage rights BNSF obtained in the UP/SP merger proceeding, might obviate the need for enhanced competition from smaller railroads. If this was the Board's thinking, PPL urges the Board to think again.

For all its fanfare, the trackage rights agreement between UP and BNSF has failed to live up to shippers' hopes. Moreover, as the number of Class I railroads shrinks, the danger of collusion masquerading as competition increases. In addition, any rationalization accompanying future major mergers will increase the number of shippers served <u>only</u> by a Class II or III railroad. Measures to enhance rail-to-rail competition that exclude relief from paper and steel barriers are unlikely to succeed.

The Board should amend proposed 49 C.F.R. § 1180.1(c) to incorporate the policies set forth in the ASLRRA Short Line and Regional Railroad Bill of Rights.

D. <u>The Board's Proposals to Enhance Competition Should be Clarified and Strengthened</u>

The NPR mentions the need for enhanced competition in several places. To the extent that these references indicate a change of policy by the STB, PPL welcomes them. However, as discussed above, the lack of specificity in the regulations, and in the accompanying explanatory text, leaves it unclear how, or even whether, the status of captive shippers will change in future merger proceedings. A close reading of the NPR raises more questions than it answers, because the Board's expressions of support for new competition are so often equivocal.

Thus, proposed 49 C.F.R. § 1180.1 states that "the Board does not favor consolidations that reduce railroad and other transportation alternatives," but this statement is immediately qualified by the words "unless there are substantial and demonstrable public benefits ... that cannot otherwise be achieved." Does this mean that applicant railroads may <u>reduce</u> competition if this is the price they demand for other "substantial and demonstrable" public benefits?

Proposed Section 1180.1(b) cites the need to balance various goals, one of which is effective competition. But has the Board adopted a less narrow definition of effective competition than resulted from the "one-lump" theory? We don't know. The explanatory text speaks of reduced concern over excess capacity, but would a showing of excess capacity in specific areas trump the goal of effective competition?

Provisions for enhanced competition appear to be a requirement of future merger applications under proposed Section 1180.1(c), but there appear to be several escape clauses. First, enhanced competition is called for "[t]o maintain a balance in favor of the public interest." Presumably, maintaining this balance in a different way might relieve the applicants of the need to enhance competition. Second, the applicants could apparently offset reduced competition for some shippers with enhanced competition for others. And if escape clauses one and two don't work, the consequence is that the Board will "likely" make broad use of its conditioning powers under the statute to require enhanced competition as a condition of merger approval.

But a review of proposed Section 1180.1(d) suggests loopholes in the Board's willingness to impose conditions. Specifically, conditions designed to enhance competition will apparently not be imposed where anticompetitive merger effects can be mitigated in some other way, e.g., through other benefits or where the applicants offer alternative forms of competition.

A major concern for PPL is that the major railroads will use their enormous economic power to distort the marketplace. Sources of raw materials will thrive or wither not because they are fairly priced or efficient, but because they maximize or minimize railroad long hauls. Markets for bulk materials will grow or shrink to suit railroads' needs instead of customers'.

These concerns are not abstract for PPL. In PPL's last rate case,[4] Conrail attempted to use its tariff publishing and pricing power over its bottleneck segment of the rail lines to PPL power plants to force consumption of high-sulfur coal from Conrail-served lines, in place of low-sulfur coal from mines in Central Appalachia served by NS and CSX. When negotiations failed, PPL had no choice but to fight this blatant attempt by Conrail to usurp PPL management prerogatives. While that proceeding was settled on satisfactory terms, PPL remains concerned about the ability and inclination of railroads to influence patterns of consumption and distribution in the economy as a whole.

The NPR, because of its preservation of the applicants' initiative with respect to the structuring of mergers, and its creation of loopholes and offsets, appears to invite major railroads to manipulate the enhancement of competition to maximize their own benefits. For example, merging railroads might promote or enhance competition for low-margin intermodal traffic (thereby lessening their own exposure to penalties for poor service), and then argue that they are thereby relieved of any obligation to promote or enhance competition for high-margin coal, chemical or grain shippers. Or major railroads might argue that by increasing competition with motor carriers, they have earned the right to reduce competition from smaller railroads, or close gateways.

PPL hopes that such outcomes are not what the Board intended.

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[4] Docket No. 41295, Pennsylvania Power & Light Co. v. Consolidated Rail Corp., et al.

But the absence from either the proposed rules or the explanatory text of any clear and unequivocal endorsement of increased competition creates uncertainty among shipper parties to this proceeding.

Competition should no longer be considered a threat from which major railroads need to be protected. On the contrary, experience has demonstrated that competition benefits competitors, customers, the economy and the nation. PPL welcomes the Board's statement in the explanatory text accompanying proposed 49 C.F.R. § 1180.1(b) that "We would upgrade the importance of competition." However, the new rules or their preamble need to express, more vigorously and more clearly, this bedrock policy.

As part of this change, the Board should explicitly overrule the requirement of a showing of anticompetitive conduct by major railroads as a prerequisite to the effective implementation of STB competitive access rules. The Board should also maximize the benefits of its downstream review of merger impacts by equalizing the exposure to competition of merging and not-yet-merged major railroads.

IV. CONCLUSION

For the reasons set forth above and in the earlier comments incorporated by reference herein, PPL urges the Board to expand and clarify its proposed rules and their explanatory text to do more to promote and enhance rail-to-rail competition, and to prevent merging railroads from funding extravagant, misguided or bungled mergers through rail rate increases.

Respectfully submitted,

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Attorney for PPL Generation, LLC and PPL Montana, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served, by first class mail, postage prepaid, on all parties of record this 17th day of November, 2000.

John M. Cutler, Jr.

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